IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1187 of 1980

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVSING MADHAVSING VAGHELA

Versus

PRAMUKCHANDRA NATVARLAL PATEL

Appearance:

1. First Appeal No. 1187 of 1980

MR GIRISH D BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 16/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Girish D Bhatt appearing on behalf of the appellant. Though notices

have been served to the respondents, no appearance has been filed on their behalf and no one remain personally present before this Court when the matter has been taken up for hearing.

2. The matter has been notified before this Court as present First Appeal is being unready for the reasons that pleadings are not supplied by the learned advocate for the appellant. Learned advocate Mr. Girish D Bhatt has submitted that R & P has already been received and relevant records are in the First Appeal, therefore, he submitted that kindly dispense with the pleadings which has not been supplied by the appellant and the matter may be taken up for final hearing as other side is not appearing in the First Appeal. Considering the request made by learned advocate Mr. Girish D Bhatt, the office objection about not supplying the pleadings has been dispensed with and First Appeal is taken up for final hearing today, therefore, now First Appeal is ready for final hearing and there is no office objection remained.

Learned advocate Mr. Girish D Bhatt has vehemently made his submissions and also read the appeal memo before this Court and pointed out each and every ground before this Court.

3. The First Appeal has been filed by the appellant/original defendant No.1 against the judgement passed by the City Civil Court, Ahmedabad in Civil Suit No. 3285 of 1978 wherein it has been declared that the plaintiff and defendant Nos.1 to 3 have equal shares in the partnership firm in the name and style of defendant No.4. The partnership firm in the name and style of defendant No.4 has been ordered to be dissolved w.e.f. 10.9.1978 that is, from the date of the suit as detailed in the operative portion of the judgement. The plaintiff has filed suit for dissolution of partnership firm in the name and style of "The firm of Bhavsingh Madhavsingh Vaghela (which firm is impleaded as defendant No.4 in this suit) and for accounts of the firm of defendant No.4 from defendant No.1 or from any defendant who is declared liable to account w.e.f. 1.4.1977 and to award the amount due to the plaintiff on taking accounts with interest thereon @ 12% per annum w.e.f. 1.4.1977 and for other incidental relief.

4. The case of the plaintiff has been summarised as under:

4.1 The plaintiff in the company of defendant Nos. 1 and 2 and the husband of defendant No.3 together with

Popatlal Naramdashankar, Bhalvantrai Naramadashankar Trivedi and Dolatrai Naramadashankar Trivedi had started a partnership firm in the name and style of Venus Transport Company. Its business was to pay its truck on hire and it had truck bearing No. GTA 1715. A suit, bearing Civil Court by Popatlal and his two brothers named Balvantrai and Dolatrai for dissolution of the firm named Venus Transport Company and also for taking accounts. Ultimately the truck belonging to the said partnership form was purchased for Rs.14,000 by the plaintiff and defendant Nos. 1 and 2 and the is husband of defendant No.3 in the interse bid thereof among respect of the said firm were settled among all the partners there of. However, since it was not possible to raise the amount of Rs.14,000 by the plaintiff as well as defendant Nos. 1 and the husband of defendant No.3 the said amount of Rs.14,000 was paid by the plaintiff's father on the condition that, till the said amount of Rs.14,000 was fully paid up the business of plying the said truck was to be treated as an independent business of the plaintiff's father. Thereafter, upon payment the said amount of Rs.14,000 with interest, the said truck was to be treated as of the ownership of the firm of Nutan Transport Company which was started in the partnership of the plaintiff and defendant Nos. 1, 2 & 3 Nutan Transport Company came into existence with effect from 28th September, 1963 and the business of plying its truck was started treating the truck bearing No. GTS 1715 as of its ownership. The partnership agreement in respect of Nutan Transport Company was executed by the plaintiff and defendant Nos. 1, 2 & 3 on a stamp paper on 30th September, 1968. Its accounting year was to end on 31st March every year as agreed between the parties. All partners had equal share in the profit or loss arising from its business. Defendant No.1 was to drive the truck for which he was to be paid Rs.150 per month towards his remuneration for the purpose. Defendant No.1 was required to render accounts regarding income and expenses for plying the partnership truck on hire and the accounts of partnership were to maintained by the plaintiff and defendant No.2. The accounts of Nutan Transport Company were accordingly maintained by defendant No.2 on the basis of the statement of accounts furnished by defendant No.1 during the subsistence of the partnership firm in the name and style of 'Nutan Transport Company' the truck bearing No. GTA 1715 was sold for Rs.8000. The firm of Nutan Transport Company was kept running till 31st March 1973 and the partners thereof have settled their accounts till 31st March 1973. The accounts to the credit of the partners of Nutan Transport Company as found on 31st March, 1973 were

credited as their respective credit amounts in the new firm in the name and style of defendant No.4 which new firm came into existence from 1970 A.D. during the subsistence of the firm in the name and style of Nutan Transport Company it was felt that the truck belonging to it had become quite old and it was decided to purchase a new truck in partnership since the Gujarat State Financial Corporation (hereinafter referred to as 'the Corporation') was advancing loans for the purchase of truck only to licensed driver, it was decided to make an application for loan to the Corporation in the name of defendant No.1 which was accordingly made on 27th November, 1969 along with payment on deposit of Rs.100. It was informed by the Corporation by its letter dated 18th August, 1970 that it had sanctioned the loan of Rs.51,000 towards purchase of new truck and it should be collected from the Corporation. It was decided by the partners, that is by the plaintiff and the defendant No.1 to 3, that the new Truck to be purchased was of the brand Tata Mercedez from its agent at Ahmedabad named Lakhia Brothers was paid on 27th April, 1970. a total amount of Rs.14,660 was brought from the partnership firm in the name and style of Nutan Transport Company from 27th November, 1969 to 26th September, 1970 and was credited in the firm of defendant No.4. The entire amount towards purchase of new truck has been accounted nor in the books of accounts of the firm of defendant No.4. The loan received from the Corporation towards purchase of the new truck was also credited in books of accounts of the firm of defendant No.4 (hereinafter referred to as 'the said firm'). It was decided to close the first years of the suit firm on 31st March 1971 and thereafter the accounting year was to be kept from 1st April, till 31st March of the next year. The new truck purchased by the suit firm was given registration No. GTD 5077 (hereinafter referred to as 'the suit truck') since the loan was received from the Corporation in the name of defendant No.1. Accounts regarding income and expenditure in respect of the suit truck were maintained in the books of accounts of the suit firm. After the purchase of the suit truck and making it ply on hire, defendant No.1 purchased two stamp papers of Rs.50 each on 21st December, 1970 for the purpose of execution of a partnership document in respect of the suit firm which was only executed on that day. The expenses for execution of such partner such document have been debited in the books of accounts of the suit firm. It was agreed between the partners that defendant No.1 should run the suit truck and he was to be paid Rs.200 per month towards his remuneration for the purpose under the deed of partnership in respect of the suit firm. It was also

agreed between the partners that defendant No.2 was to maintain partnership accounts on the basis of statement of accounts regarding income and expenditure in respect of accounts regarding income and expenditure by defendant No.1 for plying the truck. No remuneration was fixed for maintaining accounts by defendant No.2, however, upon payment of the loan from the Corporation with interest, it was agreed between the partner of the suit firm to pay Rs.4000 per annum to defendant No.2 towards his remuneration with effect from 1st April, 1975. It was also agreed between the parties to open a Joint Bank account in the name of defendant No.1 and 2 to be operated by either of them. A propose a savings bank account bearing No. 474 was opened in the Ahmedabad Peoples Co-operative Bank Limited. Defendant No.1 gave statements of accounts with 1977 regarding income and expenditure of the suit truck while it was driven by him on hire. Defendant No.1, however, stopped giving statements of accounts after 31st December, 1977 presumably with a view to claiming his independent ownership of the suit truck after payment of the loan from the Corporation with interest. Defendant No.1 was asked to furnish the statements of accounts regarding income and expenditure in respect of the suit truck from time to time. But he paid no heed to such demands. The plaintiff thereupon served notice dated 3rd July 1978 through his advocate to defendant No.1, 2 & 3 to which defendant No.1 has through his advocate given an evasive reply dated 14th July 1978 claiming his independent ownership of the suit truck. Defendant No.3 by her reply dated 25th July 1978 to the plaintiffs notice have claimed dissolution of the suit firm and accounts there of upon such dissolution. The plaintiff has, therefore, filed this suit for dissolution and accounts.

5. The defendant No.1 has filed reply at exhibit-17 and resisted the suit on various grounds. In his reply at exhibit 17 defendant No.1 has denied his partnership in the firm of Nutan Transport Company he has also denied execution of its documents on 30th September 1968. He has denied his signature on the deed of partnership as appearing in the photostat copy of the said document. He has also denied the partnership of the suit firm together with execution of its documents as averred in the plaint. In his written statement at exhibit 17 he has claimed the suit truck of his independent ownership right from the date of its purchased with the aid of the loan from the Corporation. It is his case in the written statement at exhibit 17 that he was required to purchase two stamp papers of Rs.50 each on 21st December, 1970 under the pretext that writing was regarding the firm of Nutan

Transport Company in two sets out of which one set on one stamp paper was to be handed over to defendant No.1 so as to avoid any further dispute in that regard. In short, defendant No.1 was in his written statement at exhibit 17 denied the case of partnership in respect of the suit firm as claimed by the plaintiff in this unit. Defendant Nos. 2, 3 & 4 have filed their written statement at exhibit 14 and have supported the plaintiff's case.

6. On the aforesaid pleadings between the parties the Trial Court has framed issues vide exhibit-34. Following are the issues framed by the Trial court:

(1) Whether the plaintiff proves that the accounts of Nutan Transport Company, a partnership firm, were settled as averred in the plaint?

(2) Whether the plaintiff proves that truck bearing No. GAD 5077 is property of the partnership firm run in the name and style of defendant No.4 ?

(3) Whether the defendant No.1 proves that the joint name of the defendant No.1 and 2 in People's Co-operative Bank Ltd. Khadia Branch, Ahmedabad, by defendant No.1 as his sole account and not or the defendant No.4 partnership firm ?

(4) xxx xxx xxx

(5) Whether the plaintiff proves that plaintiff and defendant Nos. 1, 2 & 3 have equal share in the profit and loss in defendant No.4 firm ?

(6) Whether preliminary decree, if any ?

(7) What order ?

7. I have perused the judgement given by the Trial Court. In respect to the issue No.1, the Trial Court has come to the conclusion that vide exhibit 148 of the evidence of the plaintiff has clearly stated that partnership in the name and style of Nutan Transport Company was dissolved by mutual consent on 31st March 1973 and the accounts were settled and the due credits of the amount standing in the name or each partner in the firm of Nutan Transport Company were given in the books of accounts of the partnership firm of Nutan Transport Company have been produced in that case at exhibits 96 to

105. The Defendant No.2 and 3 have supported the plaintiffs case all throughout and they have not disputed correctness of the books of accounts of the partnership firm of Nutan Transport Company. Defendant No.1 has also not seriously challenged the correctness of the book of accounts of Nutan Transport Company. Therefore, ultimately, Trial Court has answered the issue No.1 in favour of plaintiff in the affirmative. Thereafter, Trial Court has examined the issue Nos. 2, 3 & 5 and discussed the oral evidence as well as documentary evidence and come to the conclusion that defendant No.1 also did execute the partnership agreement as exhibit-106 and partnership firm in the name and style of defendant No.4 to come in existence for the purpose of carrying the transport business and it comprises of the plaintiff and the defendant Nos. 1 to 3 as a partners and therefore, the suit truck was purchased for the firm that is the firm in the name and style of defendant No.4. The Trial Court has also considered the various decisions relied by the respective parties in light of provisions made under Section 23 of Contract Act in respect of issue of public policy and ultimately Trial court has relied the observations made in the Full Bench decision of Madhya Pradesh High Court in the case of Gulabchand Gambhiram v. Kudilal Govindram and another, reported in AIR 1959 Madhya Pradesh, page 151. The relevant observation which has been relied by the Trial court is as under:

"Certain classes of contracts have been rule by authorities as contrary to public policy. The recognised clauses are (i) agreement which injuries the state in its relation with other states. (ii) agreement tending to injured the public service, (iii) agreements which tend to prevent the course of justice, (iv) agreements which tend to abuse of legal process, (v) agreements which aggect the freedom of marriage or interfere with duties incumbent on individuals, and (vi) agreement which are contrary to morals. the courts have been opposed to rely on public policy as a ground for diminishing freedom of contract and have again and again one or other of these classifications but lies outside it, the court should use extreme reserve in holding a contract to be void as against public policy and should only do so when the contract is incontestable and on any view inimical to the public interest."

8. Therefore, after relying upon the above observation, the Trial court has answered the issue No.2

in the affirmative and issue No.3 in negative because once the Trial Court has accepted the partnership agreement at exhibit 106 to be legal and valid which clearly provide that all the partners will have equal shares in the profit and loss arising from the partnership business and therefore in result to that discussion ultimately the issue No.5 also is decided in affirmative.

9. Thereafter, the Trial court has considered issue No.4 in paragraph 12 and considered Clause 13 of the partnership agreement of exhibit-106 which according to the Trial Court cannot absolve person or persons liable to render accounts from his or their liability regarding rendition of accounts imposed under Section 9 of the Partnership Act. Therefore, that issue No.4 has been decided in the negative and against the plaintiff. Ultimately the Trial Court has examined the issue No. 6 in paragraph 13 and after going to the evidence and relevant documents ultimately the Trial Court has come to the conclusion that for removal of defendant No.1 as interim receiver it is not necessary to refer such circumstances and therefore Trial Court has directed to defendant No.1 to deposit the suit truck in the safe custody of the Court within a fortnight from the date of the order and it was open to the parties to apply for interim receiver for plying the truck for transport business during the period the partnership account are fully and finally settled among the parties. Then ultimately the Trial Court has passed an order and declared that plaintiff and defendant Nos. 1 to 3 have equal shares in the partnership in the name and style of defendant No.4 and partnership firm in the name and style of defendant No.4 is ordered to be dissolved w.e.f. 15.9.1978 from the date of the suit and defendant No.2 shall render the true and correct of the affairs of the defendant No.4 firm from the date of the commencement of its business till it dissolution and defendant No.1 shall render true and correct accounts regarding income derived and expenses incurred by him for plying the suit truck for transport business w.e.f. 1st January 1978 till the date of its dissolution also from the date of dissolution till he hands over the suit truck for its safe custody in the court within fifteen days from the date of the order passed by the Court and thereafter, the matter has been referred to the Commissioner for taking accounts for rendition of accounts as ordered by the Court and Commissioner for taking accounts shall submit his report on or before 31.12.1980 and the matter has been transferred to Commissioner for taking accounts.

10. I have considered the entire judgement and order passed by the Trial Court. I have also gone through the oral as well as documentary evidence from the original record and proceedings and according to my opinion, the Trial Court has rightly appreciated the oral as well as documentary evidence and Trial Court has rightly gave finding in favour of the plaintiff and reasons which have been given by the Trial are not baseless and perverse. According to my opinion Trial Court has not committed any error while arriving at such conclusion and therefore, the submission which has been made by the learned advocate Mr. Girish D Bhatt cannot be accepted and there is no substance in the appeal and therefore present appeal is dismissed. No order as to costs.

(H.K.Rathod,J)

Jayanti*